



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**NORTHEAST REGIONAL OFFICE**

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**CERTIFIED MAIL**

Richard A. Nylen, Esq.  
Lynch DeSimone & Nylen, LLP  
12 Post Office Square  
Boston, Massachusetts 02109

June 12, 2007

Re: NEWBURYPORT - Solid Wastes/COR  
Crow Lane Landfill  
Litter Control Plan  
Modified Conditional Approval  
FMF No. 39545

Dear Attorney Nylen:

The Massachusetts Department of Environmental Protection, Northeast regional Office, Bureau of Waste Prevention, Solid Waste Management Section (the "MassDEP") has received your request that the Department's May 2, 2007 Conditional Approval (the "Decision") of the litter control plan for the Crow Lane Landfill ("Landfill") in Newburyport, Massachusetts, be deemed a provisional decision pursuant to 310 CMR 19.037(4)(b). You submitted the request to the MassDEP on behalf of your client, New Ventures LLC of Everett, Massachusetts ("New Ventures") of Everett, Massachusetts.

Pursuant to section 310 CMR 19.037(4)(b) of the Massachusetts Solid Waste Management Regulations receipt of this requests renders the DEP's Decision a provisional decision and reopens the record for review. The MassDEP may rescind, supplement, modify or reaffirm its decision on the application.



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Specifically, you stated that Condition 1 of the Decision was excessive because:

- it required the placement of six (6) inches of soil on the inactive portions of the Landfill in addition to the tarps required by the preliminary injunction entered on October 20, 2006 in Suffolk Superior Court, Civil Action No. 06-0790 C, as amended by order of the Court on November 1, 2006 and February 22, 2007 (the “Preliminary Injunction”);
- no other landfill in Massachusetts is required to have such redundancy; and
- New Ventures was replacing the tarps on the landfill and that the tarps will provide adequate cover in the inactive landfill.

The MassDEP concurs that the tarps when properly placed, maintained, and secured within the inactive areas provide sufficient cover for purposes of litter control.

You stated that Condition 2 of the decision was excessive because:

- it requires the placement of six (6) inches of soil cover on active areas of the landfill at the end of each working day;
- it is in contravention of and circumvents the Preliminary Injunction; and
- it would result in the lost of air space without any benefit to the public health, safety or the environment.

The MassDEP does not concur. Condition 2 of the Decision does not contravene or circumvent the Preliminary Injunction, since the issue of litter control is not specifically addressed in the Preliminary Injunction. In addition, any landfill that currently receives and places Construction and Demolition (“C&D”) Fines and Residuals as shaping and grading material in the Commonwealth of Massachusetts is required to place at least six (6) inches of soil as daily cover over active working areas at the end of each working day in part to control wind blown litter. The control of wind blown litter is required pursuant to section 310 CMR 19.130(17) of the Solid Waste Regulations and 310 CMR 19.130(15)(c) requires the placement of a minimum of six inches of compacted soil daily cover or other cover approved by the MassDEP sufficient to control vectors, odors, and blowing litter. This requirement is in place to protect the public health, welfare, safety and the environment.

Lastly, you object to the requirement under Condition 3 of the Decision that New Ventures record and maintain on the premises records of the daily inspections of the Landfill for litter.

310 CMR 19.130(34) requires that landfills maintain a daily log to record operational information including but not limited to the amount of solid waste received and the status of all environmental control and monitoring systems. The records required by Condition 3 of the Decision document that New Ventures is conducting the required inspections and is consistent with this requirement. In addition, 310 CMR 19.403(1) provides that the MassDEP may impose such conditions as are necessary to ensure compliance with 310 CMR 19.000 including, without limitation inspection, reporting and verification requirements.

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Therefore, the MassDEP issues the following Final Decision.

### **Final Decision**

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section (the "MassDEP") and the Office of the Attorney General is in receipt of your letter dated April 25, 2007 describing the four point litter control plan ("Plan") that New Ventures Associates, LCC ("New Ventures") of Everett, Massachusetts proposes to implement at the Crow Lane Landfill in Newburyport, Massachusetts to control litter at the site.

The Plan does not provide for: the placement of cover or other measures to control the release of litter from active areas of the landfill; the routine inspection of the landfill and adjoining areas for litter; or the removal of litter from off-site property, if required, on a regular basis. As a result, the Plan as proposed does not adequately control wind blown litter at the landfill. Therefore, in accordance with 310 CMR 19.043(1), the MassDEP approves the Plan subject to the following conditions:

1. New Ventures shall place and maintain on active areas of the landfill at the end of each working day at least one of the following: (a) not less than six (6) inches of soil that does not contain any C & D Fines and Residuals, solid waste, or litter; (b) impervious tarps; or (c) poly sheeting at least 11 millimeters thick.
2. New Ventures shall inspect the landfill and off-site abutting areas at the beginning of each workday for litter and shall remove any excessive litter identified during this inspection by the end of that workday. The inspection(s) and the removal of the litter shall be recorded daily and that record shall be placed and maintained onsite in the facility's records. Such records shall be made available at the landfill to representatives of MassDEP upon request.

This approval is also subject to the standard conditions of 310 CMR 19.043(5). This approval is issued pursuant to Massachusetts General Laws Chapter 111, Section 150A and section 310 CMR 19.037 et seq of the Massachusetts Solid Waste Regulations. In the event this approval conflicts with all or parts of prior plan approvals or permits issued pursuant to M.G.L. Chapter 111 Section 150A, the terms and conditions of this approval shall supersede the conflicting provisions of such prior permits or approvals.

This approval does not convey property rights of any sort or any exclusive privilege. Also, MassDEP reminds you that this approval does not relieve you from the responsibility to comply with all other applicable state, federal, and local laws and regulations, or to comply with the Order including, without limitation, all tarp placement requirements of paragraph 1(j) of the Order.

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The MassDEP retains the right to amend or modify this approval, or otherwise require additional actions, as necessary to control wind blown litter at the Landfill pursuant to 310 CMR 19.000.

### NOTICE OF RIGHT TO APPEAL

Appeal. Any person aggrieved by the issuance of this decision may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, s. 150A, and M.G.L. c. 30A, not later than thirty (30) days following the receipt of the final decision. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the decision by a court of competent jurisdiction, the decision shall remain effective.

Notice of Action. Any aggrieved person intending to appeal this decision to the Superior Court shall first provide notice to the Department of their intention to commence such action. Said notice of intention shall include the Department file number and shall identify with particularity the issues and reasons why it is believed the decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the application. The appropriate addresses to which to send such notices are:

General Counsel  
Department of Environmental Protection  
One Winter Street - 3rd Floor  
Boston, MA 02108

Regional Director  
Department of Environmental Protection  
Northeast Regional Office – 5<sup>th</sup> Floor  
One Winter Street  
Boston, MA 02108

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in those regulations, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

If you have any questions please contact me at 978-694-3299.

Sincerely,

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**Massachusetts Department of Environmental Protection.**  
**A signed copy of this document**  
**is on file at the DEP office listed on the letterhead.**

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John A. Carrigan  
Section Chief  
Solid Waste Management

JAC/jac

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